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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,500	01/26/2001	David A. Maltz	10767/7	6238

39368	7590	07/20/2004	

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EXAMINER
DALENCOURT, YVES

ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 January 2001</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-33</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-33</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>5</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

This office action is responsive to communication filed on 01/26/01.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

Claims 1 – 33 are rejected under 35 U.S.C. 102(e) as being anticipated by

Fletcher et al (US 6,085,243; hereinafter Fletcher).

Regarding claims 1, 8 – 9, 13 - 14, 16, 30 – 31, and 33, Fletcher teaches a

method for collection and storage of traffic data (fig. 1), the method comprising the steps

of collecting traffic data from a plurality of network elements in a first point of presence

in a computer network, wherein traffic data is collected from each network element

using a protocol appropriate for the network element (col. 8, lines 20 – 45; col. 13, lines

33 – 39; see abstract); analyzing the collected traffic data (col. 4, lines 14 - 49); and

transmitting a result of the analysis to a storage device remote from the first point of

presence (col. 6, lines 25 – 35; col. 8, lines 46 - 55).

Regarding claims 2, 5 – 6, 15, 17, 20, and 32, Fletcher teaches a special

application program, sometimes referred to as an RMON Manager, which automatically

tracks network traffic volume and errors for each ES MAC address seen on a segment

and maintains a Host Matrix table of MAC address pairs that have exchanged packets

and the traffic volume and errors associated with those address pairs. Such RMON also

permits the collection and maintenance of historical network performance metrics

thereby facilitating trend analysis and proactive performance monitoring (col. 4, lines 37

– 44; claimed predicting traffic demands based on the collected traffic data, and

transmitting the predicted traffic demands to the storage device).

Regarding claims 3, 18, Fletcher teaches a method for collection and storage of

traffic data (fig. 1), wherein a number of bytes required to transmit the result of the

analysis to the storage device is less than a number of bytes required to transmit the

collected traffic data to the storage device (see col. 7, lines 17 – 24; Fletcher discloses

that the dRMON agents routinely perform this analysis and forward the results (not the

entire packets; less bytes than the collected data) to the collector).

Regarding claims 4, 19, Fletcher teaches a method for collection and storage of

traffic data (fig. 1), which further comprising the step of analyzing the results stored in

the storage device (col. 8, lines 58 – 63).

Regarding claims 7, 21, Fletcher teaches a method for collection and storage of

traffic data (fig. 1), which further comprising the step of collecting the results stored in

the storage device, analyzing the collected results, and transmitting the results of the

analysis of the collected results to a second storage device (54, fig. 1; col. 8, lines 20 -

28).

Regarding claims 10 – 12 and 27 - 29, Fletcher teaches a method for collection

and storage of traffic data (fig. 1), which operates with a wide variety of types of network

devices including networks and communication systems dramatically different from the

specific examples illustrated in fig. 1 and described below (col. 5, lines 51 – 55; claimed

at least some of the network elements are same or different type devices from different

vendors, or different type devices from same vendors).

Regarding claim 22, Fletcher teaches a method for collection and storage of traffic

data (fig. 1), wherein the first server operates on network topology information of the

computer network (col. 1, lines 53 – 61).

Regarding claim 23, Fletcher teaches a method for collection and storage of traffic

data (fig. 1), wherein the first server operates on a classification schema describing

traffic data to be collected from the plurality of network elements (col. 4, lines 37 - 44).

Regarding claim 24, Fletcher teaches a method for collection and storage of

traffic data (fig. 1), wherein the first server comprises a plurality of protocol-specific

modules, each of the protocol-specific modules being operative t translate a request for

traffic data into a form in accordance with a protocol of a selected network element (col.

2, lines 41 - 54).

Regarding claim 25, Fletcher teaches a method for collection and storage of traffic

data (fig. 1), wherein the first server is located in the first point of presence (col. 19, lines

19 - 23).

Regarding claim 26, Fletcher teaches a method for collection and storage of traffic

data (fig. 1), wherein the first server is located outside of the first point of presence (col.

19, lines 19 - 23).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11
F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA
1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*,
418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be
used to overcome an actual or provisional rejection based on a nonstatutory double
patenting ground provided the conflicting application or patent is shown to be commonly
owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

Claims 1 – 33 are provisionally rejected under the judicially created doctrine of

obviousness-type double patenting as being unpatentable over claims 1 - 40 of

copending Application No. 09/771,498. Although the conflicting claims are not identical,

they are not patentably distinct from each other because claims 1 – 15, and 33 of US

Application No. 09/771,500 recite a method and system for collection and storage of

traffic data, the method comprising the step of collecting traffic data from a plurality of

network elements in a first point of presence in a computer network as compared to

claims 19 – 20, 22 - 36 and 40 of US Application No. 09/771,498, which recite the step

of collecting traffic data from at least one network element. Also, claims 16 – 32 of US

Application No. 09/771,500 recite a method and system for collection and storage of

traffic data in a computer network, the system comprising a first point of presence in a

computer network, the first point of presence comprising a plurality of network elements

as compared to claims 1 – 2, 4 - 18 and 37 – 39, which recite a first point of presence in

a computer network, the first point of presence comprising at least one network

element.

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Volkmar Heuer (US Patent Number 6,205,121) discloses a method of

establishing logical connections in a synchronous digital communications network, as

well as network elements and management system.

Contact Information

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Yves Dalencourt whose telephone number is (703) 308-

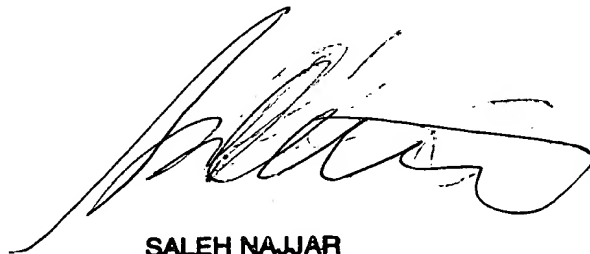8547. The examiner can normally be reached on M-TH 7:30AM - 6: 30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Yves Dalencourt
Y. D
July 5, 2004

SALEH NAJJAR
PRIMARY EXAMINER